Scott. II-27—45,004—21-10-27.

Law (General) **(1928) Department.**

Misc **SERIES.**

G.O. No. 3379

DATED 6-10-28

[Despatch Abstract.]

Criminal appeal - Appeal against acquittal - 2nd and 3rd accused Sessions Case No.3-36 of 1928 on the file of the Sessions Judge, South Kanara, Declined.

C.F. 80—10,000—7-6-26.

JUDICIAL **DEPARTMENT.**

L 4269 β

Received ..... 192 *Registered* 192

4 X. 28

Subject

Appeal against acquittal - Sec.302 I.P.C. - Accused 2 and 3 - S.C.No.3 & 36/28 - Sessions Judge, South Kanara - Forwarding opinion.

ENCLOSURES.

No. .....

.....

Spare copies .....

Opinion No. 94 of 28.

Station Madras, *Dated the* 1st October 1928

From (Name) L. H. Bewes Esq.,

(Designation) Public Prosecutor, Madras.

To The Secretary to the Government of Madras,

Law (General) Department.

Sir,

I have the honour to forward herewith copy of the letter and judgment in S.C.No.3 & 36 of 1928 on the file of the Sessions Judge, South Kanara, received from the High Court together with a copy of the note of the Honourable Mr. Justice Odgers.

In my view the acquittal of the 2nd and 3rd accused is right. On his voluntary confession corroborated in material particulars by the evidence of P.Ws 2 and 12 the first accused has been convicted. The

evidence of P.W.3 has been disbelieved by the Sessions Judge. As against the 2nd accused there is only the evidence of P.W.2. I think it is unlikely that a Court would convict a person in appeal on the evidence of a single witness such as given by P.W.2. The evidence against the 3rd accused is not appreciably stronger. Neither the second nor the third accused have been implicated by the first accused in his confession. He in fact implicated four totally different persons. Equally significant is the failure of the Police to include them along with the 1st accused in the original charge. I am therefore of opinion that an appeal is not likely to be successful.

I have the honour to be,

Sir,

Your most obedient servant,

L. H. Bevis

Public Prosecutor.

3

Copy of the letter No.1828 J dated 25th September 1928 from the Registrar, High Court, Madras to the Public Prosecutor, Madras.

I am asked by His Lordship Mr. Justice Odgers to forward to you a copy of judgment in Sessions Case No. 3 and 36 of 1928 on the file of the Sessions Judge of South Kanara with his Lordship's remarks thereon and to request you to be good enough to intimate to the High Court whether there are grounds for Government to prefer an appeal against acquittal under Section 302 I.P.C in respect of accused 2 and 3 in the case. The Referred Trial (R.T.No.102 of 1928) in respect of the 1st accused is pending printing and notice in the High Court.

NOTE OF THE HONOURABLE MR. JUSTICE ODGERS

on

R.T.No. 102 of 1928.

If the evidence, apart from accused's confession, is sufficient to convict 1st accused, I do not gather from the judgment that it is not equally strong against accused 2 and 3.

In the Court of Sessions, South Kanara.

August Sessions.

Monday, the 3rd day of September 1928

PRESENT :—K. S. MENON, ESQUIRE, B. A., BAR-AT-LAW,
Sessions Judge.

Sessions Case Nos. 3-36 of 1928.

NAMES OF THE ACCUSED : ... 1. Chuntar Kukkappa Gowda.
2. Kuntuni Kukkappa Gowda.
3. Sheni Ramappa Gowda.

CHARGE : ... ... Murder—Section 302 I. P. C.

ASSESSORS : ... ... Messrs. 1. P. B. Pinto (Roman Catholic Christian).
2. Albert Gonsalves (do).
3. C. Ganapathi Kamath (Gowd Saraswath Brahmin).
4. H. Vaman Nayak (Chaptekar).

OPINION OF ASSESSORS ... *1st Assessor* :—"I believe the whole of the prosecution evidence. To the extent of the enmity alleged, and of the part taken by himself in the murder, I believe the 1st accused's confessional statement. All the three accused are guilty of murder."

2nd Assessor :—"I believe the evidence of Dumappa and Koraga only to the extent that they had seen three persons running away with guns in their hands. I do not believe that they had recognised those persons. I believe the confessional statement of the 1st accused to the extent he implicates himself. I believe Thimmappa Rai and Maila. I do not believe Hukra Gowda. The 1st accused is guilty of murder. Accused 2 and 3 are not guilty of any offence."

3rd Assessor :—"I do not believe that either Dumappa or Koraga was following the deceased. I do not believe their evidence. The 1st accused's confessional statement is true to the extent he implicates himself. I do not believe Thimmappa Rai or Hukra Gowda. I am satisfied that the 1st accused shot the deceased, but as it is not

certain that his shot hit the deceased, he is guilty of only attempt to commit murder. Accused 2 and 3 are not guilty of any offence."

4th Assessor:—"I do not believe Dumappa or Koraga. I do not think that they were with the deceased. I do not believe the confessional statement of the 1st accused. I do not believe Thimmappa Rai or Hukra Gowda or other witnesses. The accused are not proved to be guilty of any offence."

FINDING OF THE JUDGE: ... 1st accused is guilty under Section 302 I. P. C.

SENTENCE AND ORDER: ... 1st accused is sentenced to be hanged by the neck until he is dead, subject to the confirmation of the sentence by the High Court. Accused 2 and 3 are acquitted and set at liberty.

The 1st accused was defended by Mr. B. Narsing Rao (Counsel) and accused 2 and 3 by M. R. Ry. Rao Saheb K. Naraina Rao.

The case was committed by Mr. B. Somappa, Sub-Magistrate, Puttur, in R. C. Nos. 29 of 1927 and 3 of 1928 on his file.

JUDGMENT

The accused are charged under Section 302 I. P. C., with having committed murder of Aivernad Narain Rao, on the 4th December 1927.

2. The case for the prosecution is briefly as follows:—The deceased Narain Rao was the Shanbhogue of Aivernad. The husband of P. W. 16 had executed a deed of settlement in favour of his reversioners. When he contemplated filing a suit to set aside that document, the 1st accused, the father of 3rd accused and several others went to his house in order to prevent him by force from going to Puttur and filing a suit, and there was an altercation between them. P. W. 16 therefore filed the complaint (Exhibit J) against the 1st accused, father of 3rd accused and others before the 2nd Class Magistrate of Puttur. The deceased was helping P. W. 16 in that matter. The complaint was however thrown out in June 1927. The husband of P. W. 16 died soon after, and the deceased obtained from P. W. 16 a usufructuary mortgage over the Padpu properties belonging to her husband in the name of P. W. 5. There was thus ill-feeling between the deceased on the one hand, and the 1st accused and the father of the 3rd accused on the other.

3. Again, on the 8th November last, accused 1 and 2 and the father of the 3rd accused went with several other persons to the areca garden in Kayar belonging to P. W. 18, beat the watchman P. W. 17 and carried away large number of arecanuts. They also carried P. W. 17 and shut him up for some days. The deceased was instrumental in finding out the place where P. W. 17 was. Complaints were subsequently filed both by P. Ws. 17 and 18 against accused 1 and 2 and the father of the 3rd accused and others; and those complaints were pending at the time of the offence. The deceased was helping P. Ws. 17 and 18 in the matter of their complaints against the accused. The feelings between the deceased and the accused were therefore very strained.

On the 3rd December the deceased went to the house of Ramakrishnaya at Sulugodu for the purpose of getting the fields in the Padpu properties ploughed. The *Kandath Kori* (ploughing the fields) was performed on Saturday. Early on Sunday morning, the 4th December, the deceased left Ramakrishnaya's house for the temple at Aivernad where some repairs were going on. He asked P. Ws. 2 and 3 to follow him. On their way, after they got on the Sheni-Deraje road, P. Ws. 2 and 3 heard the reports of three guns fired in quick succession one after the other and when they proceeded a few more paces, they saw the deceased going along the road reeling. Immediately after that, they saw the three accused getting down from the road into the drain on the right side of it with guns under their arms and going along the drain for two *marus* and then disappearing into the forest beyond. When they proceeded about 20 *marus* more, they again heard the report of a gun. The deceased was not then visible to them. Soon afterwards, they saw the deceased fallen on the road and rolling there. They hurried towards him and saw that he was bleeding profusely. He told them to go and give information at his house. Both of them accordingly went to the house of the deceased which was about two miles away and informed his brother (P. W. 4) that the deceased had been shot. P. W. 4 sent a man to the Potail's house to inform P. W. 8, a brother of the Potail that the deceased had been shot. The Potail was then away at Puttur. P. W. 4 at once started for the place where the deceased was lying. On the way when he questioned P. W. 2, the latter told him that, immediately after he heard the reports of guns, he saw the three accused going along with guns in their hands. Narain Rao died before P. W. 4 arrived at the place where he had fallen. P. W. 4 at once sent P. W. 3 to the house of P. W. 5 to ask the latter to give information to his brother P. W. 6, who was then at Puttur. P. W. 3 accordingly went and informed P. W. 5 that the deceased had been shot. P. W. 5 hurried to the scene of offence. Soon after he arrived there, P. W. 8 also came there. P. W. 8 questioned P. Ws. 2 and 3 and they told him also that soon after they heard the reports of guns they saw the accused 1 to 3 going along with guns in their hands. P. W. 6 arrived in the afternoon. The Potail (P. W. 9) was at Sullia that day. When he heard a rumour that Narain Rao had been shot, he went to the Police Station and told the Sub-Inspector (P. W. 21) about it. He then hurried to the village and, after ascertaining that Narain Rao was dead, sent the report (Exhibit G) to the Police Station. P. W. 21, the Sub-Inspector arrived in the village the same evening. The next day an inquest was held and the dead body was sent in charge of Constable P. W. 20 to the hospital at Sullia. P. W. 1, the Sub-Assistant Surgeon there held *post-mortem* examination and gave the certificate, Exhibit A.

5. The next day, *i. e.*, 6th December, P. W. 22, the Circle Inspector of Police arrived in the village and took up investigation from the hands of P. W. 21. He examined P. Ws. 2 and 3 and others the same day. The next day he examined P. W. 13 and one Mansa, who was a prosecution witness in this case before the Committing Magistrate. The 3rd accused appeared before him on the same day and denied all knowledge of the offence. So also did the 2nd accused. On the 8th December the 1st accused appeared before him and at first denied all knowledge of the offence. But when he was confronted with Mansa, the 1st accused made a statement to the Inspector. The next day, therefore, P. W. 22 seized the double-barrelled gun (M. O. 2) from P. W. 12, and the yadast Exhibit M was prepared. The 1st accused and four other persons including P. W. 10 were arrested the same day and they were sent to Puttur. P. W. 22 then sent the requisition (Exhibit D) to the Sub-Magistrate

at Puttur to record the statement which the 1st accused was going to make. The 1st accused was produced before the Sub-Magistrate (P. W. 7) at about 3 P. M. on the 10th December and the latter gave him time till the morning of the 12th December to think over the matter. When he was brought to him on the 12th December, he again gave him two hours more. Ultimately the 1st accused made the statement Exhibit F stating that, at the instigation of P. W. 10, he and four others, who were arrested by the Circle Inspector, shot the deceased.

6. As there was not sufficient evidence against the four other persons mentioned by the 1st accused, P. W. 22 submitted a report to the Sub-Magistrate to release them. And, as his investigation showed that accused 2 and 3 in this case were elsewhere at the time of the occurrence, he consulted the District Superintendent of Police as to what he should do; and under instructions from the latter, he laid a charge only against the 1st accused. A preliminary enquiry was held and the 1st accused was committed to this Court. The case against him is S. C. 3 of 1928. In the meantime, P. W. 6 also filed a petition (Exhibit C) moving the District Magistrate and the District Superintendent of Police to drop the charge against the four persons mentioned by the 1st accused, as they were very thick friends of the deceased and to include the names of accused 2 and 3. The four persons named by the 1st accused were however dropped from the charge; but accused 2 and 3 were not included. P. W. 6 therefore filed a separate complaint against accused 2 and 3, the father of the 3rd accused, and another by name Lingappa, for the murder of his brother, Narain Rao. The complaint was enquired into by the Sub-Magistrate, and accused 2 and 3 were committed to this Court. The case against them is S. C. No. 36 of 1928.

7. The accused denied having committed any offence. Exhibits N series are the statements they made before the Committing Magistrate. The 1st accused then stated that he was tutored by the Police to make a confessional statement and that he happened to make such a statement because the Police threatened him. The 2nd accused gave details of his doings on Saturday and Sunday. He stated that this case was concocted against him at the instance of P. W. 10. The 3rd accused also pleaded that he was elsewhere at the time of the offence. He further stated that he saw P. W. 3 driving a cart earlier that day, meaning thereby that P. W. 3 could not have been at the scene of offence. In this Court, they had nothing more to say.

8. The first question for decision is how Narain Rao died. P. W. 1, who held *post-mortem* examination, says that he found in all 16 injuries on that body and that 14 of those were gunshot injuries. They were (1) a circular wound of entrance, $\frac{1}{4}$ inch in diameter, on the right nipple, (2) an irregular wound of exit, 4 inches below injury No. 1, (3) a wound of exit, $2\frac{1}{2}$ inches below injury No. 2, (4) a circular wound of entrance, $\frac{1}{2}$ inch in diameter, situated $\frac{1}{4}$ inch below the left nipple, (5) a circular wound of entrance $\frac{1}{4}$ inch in diameter, situated on the anterior surface of the left shoulder, (6) a big punched out wound of entrance, situated on the outer surface of the left shoulder, (7) two almost circular wounds of exit, situated on the internal surface of the left shoulder, (8) two circular punched out wounds of entrance close to each other situated on the axillary region, (9) a small wound of entrance, one inch internal to injury No. 5, (10) a small wound of exit, one inch internal to injury No. 9, (11) a circular wound of entrance, $\frac{1}{8}$ inch in diameter, situated four inches below injury No. 5, (12) a wound of exit, $\frac{1}{4}$ inch in diameter, on the lower third and internal surface of the left shoulder, (13) a wound of entrance on the internal surface and on the upper third of the left forearm, and (14) a wound of exit on the upper part of the

posterior surface of the left wrist. Of these, injuries Nos. 4, 6, 8, 9, 11 and 13 are wounds of entrance and the corresponding wounds of exit are Nos. 3, 7, 2, 10, 12 and 14 respectively. The most serious of the injuries was injury No. 8. P. W. 1 says that injury No. 8 was, by itself, sufficient to cause death and that the rest of the injuries all combined were also sufficient to cause death. On dissection he found four shots (M. O. 1) inside the body. The sixth and the seventh ribs were found crushed at their external ends. The spleen also was found lacerated and crushed. There can be no doubt that Narain Rao died on account of the gunshot injuries.

9. The question then for decision is whether those injuries were caused by the accused. That there was a disturbance at the house of P. W. 16 and that the latter filed a complaint against the 1st accused, father of the 3rd accused and others are satisfactorily proved by the evidence of P. Ws. 6, 16 and 19 and Exhibit J. That the deceased was helping P. W. 16 in the matter of that complaint is also proved by the evidence of these witnesses. P. W. 16, no doubt, does not say that it was the deceased who was helping her, but her Vakil (P. W. 19) admits that the deceased was helping her in the matter of the complaint. P. W. 6 also says so. It is also in evidence that after the death of the husband of P. W. 16, the deceased took a usufructuary mortgage of the Padpu properties of her husband from P. W. 16 *benami* in the name of P. W. 5. It was for the purpose of having those fields ploughed that the deceased went to the house of P. W. 5 on Friday and it was while returning from that house on Sunday that he was shot. Considering that the deceased was helping P. W. 16 in the matter of the complaint against the 1st accused and the father of the 3rd accused, there can be no doubt that the feelings between them on the one hand, and the deceased on the other, were strained.

10. It is also in evidence that the deceased was interfering with other properties and that he was helping P. Ws. 17 and 18 in their complaints against accused 1, 2 and the 3rd accused's father. P. W. 18 owns some properties known as Kayar property. P. W. 17 was watching the areca gardens there for her. They say that accused 1 and 2 and the father of the 3rd accused and others went there one day, beat P. W. 17 and carried him away and committed theft of arecanuts. P. W. 17 further says that he was shut up in a house for about eight or nine days, that it was the deceased who set him free and that it was the deceased who helped him in the matter of his complaint. P. W. 18 does not admit that the deceased was rendering her any assistance in her complaint against the accused and others, but her Vakil (P. W. 19) says that even in connection with that matter the deceased had gone to him once. He corroborates P. W. 17 and says that it was the deceased who was helping P. W. 17 in his complaint. P. W. 6 says that the incident on the Kayar property took place on the 8th November. It was soon after that that the complaints were filed. The deceased was shot dead on the 4th December. The complaints made by P. Ws. 17 and 18 against accused 1 and 2 and the father of the 3rd accused were then pending. The feelings between the deceased on the one hand, and accused 1 and 2 and the father of the 3rd accused on the other, were therefore very bitter at the time.

11. There is no evidence in this case of any eye-witness who had actually seen the accused shooting the deceased. Against all the accused, besides the evidence of enmity, there is the evidence of P. Ws. 2 and 3 that, immediately after they heard the reports of three guns, they saw these three accused getting down from the road into the drain and going along the drain for two *marus* and then disappearing in the forest and that these accused had guns with them then. Against the 1st accused,

there is further his confessional statement (Exhibit F) corroborated in some material particulars by the evidence of P. Ws. 12 and 13 and P. Ws. 2 and 3. Against the 3rd accused also, there is some other evidence, namely that of P. Ws. 14 and 15. Against the 2nd accused, the only evidence is that of P. Ws. 2 and 3 and that relating to the enmity.

12. P. Ws. 2 and 3 say that they were following the deceased on his way to Aivernad temple that day, that soon after they heard the reports of three guns fired in quick succession, they saw the three accused getting down from the road into the drain on the right side and going along the drain for two *marus* and then disappearing in the forest beyond and that all the accused had guns in their hands then. The question is how far that evidence can be relied upon. P. W. 2 was a tenant of the deceased. He says that on Friday the deceased asked him to take his bullocks to the Padpu property for the *Kandatha Kori* (ploughing the fields), that he accordingly took the bullocks, that he stayed there on Saturday also and that on Sunday morning as the deceased asked him to accompany him to Aivernad temple he went with him. The plan Exhibit K prepared in the case and the evidence of the Sub-Inspector P. W. 21 give an idea of the locality where the deceased was shot. The road along which the deceased was going runs east to west. From the point H in the plan which is the top of the ascent, the road slopes westwards on one side and north-east on the other side. It was when the deceased was going west along the road that he was shot. The road is cut on the slope of the hill to its south. A little to the north of the road is the deepest part of the valley along which the drain G runs; and the hill to the north of the drain G slopes down to the drain G. P. W. 2 says that, when he was at the top of ascent marked H in the plan, he heard the report of three guns fired in quick succession, that he then proceeded five or six *marus*, that he then saw the deceased in front of him at a distance of about 20 *marus* reeling and that at the same time he saw the accused getting down from the road into the drain on the right side. All the three accused were well known to him and there was broad daylight at the time. He admits that the three accused had covered their heads with cloths, but says that their faces were visible and that even before they turned round, he had recognised them. He says that when they were getting down into the drain they were facing east and that when they were going along the drain they were facing north. As he was going west, he could have clearly seen them when they were getting down into the drain. It is true that there is thick forest and shrub jungle on either side and that the witness could have seen the persons only for a short time. But that is no reason at all for holding that he could not have recognised them.

13. P. W. 4 says that, on his way from his house to the place where the deceased had fallen, P. W. 2 told him that he had seen the accused going with guns in their hands immediately after he heard the reports of the guns. It is said that P. W. 4 is a brother of the deceased and is therefore interested. But it is in evidence that P. W. 8, a brother of the Potail, arrived there soon afterwards and that P. W. 2 told him also that he had seen the accused going away in that manner. There is no reason shown for P. W. 8 to give false evidence against the accused. All that is pointed out is that the deceased got a promissory note Exhibit B executed by P. W. 10 in the name of P. W. 8 *benami* for him. But P. W. 8 denies all knowledge of the promissory note. He also says that he had not advanced any money to P. W. 10. I see no reason whatever to disbelieve his evidence. It is also in evidence that P. W. 2 had repeated the same to P. Ws. 5 and 6 when they arrived

there later. The Sub-Inspector says that the same evening P. W. 4 had mentioned to him the names of these accused. It is true that he had not then noted the name of P. W. 2 or of P. W. 3 in his note-book as an eye-witness. But that would not in any way prove that P. W. 2 had not given out early that day that he had seen the accused going, for if the evidence of P. W. 8 is believed, it satisfactorily establishes that P. W. 2 had mentioned to him the names of the accused earlier that day. There can be no doubt that it was P. W. 2 who first mentioned the names of the accused. His evidence has throughout been consistent. On the whole, I don't see any reason to discredit his evidence.

14. The evidence of P. W. 3, however, stands on a slightly different footing. P. W. 2 says that P. W. 3 was behind him. The statement of P. W. 3 before the Committing Magistrate, *viz.*, that he was about 10 *marus* below the top of the ascent at the time he heard the reports of the guns would, also show that he was behind P. W. 2. Both P. Ws. 2 and 3 admit that they were not confused or frightened when they heard the reports of the guns, for they say that it was very common for them to hear such in the forest. There was no reason then for either P. W. 2 or P. W. 3 to have hurried when they heard the reports of guns. P W. 2 himself says that it was after he proceeded five or six *marus* after he heard the reports of guns that he saw the accused getting down into the drain, and that the accused were visible only for a short time. The evidence of P. W. 2 is that he saw them only during the time they were getting down into the drain and proceeding two *marus* along the drain. If P. W. 3 was then somewhat behind P. W. 2, it is quite unlikely that he would have been able to get a clear view of those persons. It is, however, not improbable that he had seen three persons, but it is extremely doubtful that he had clearly recognised them. His answers in cross-examination reveal that he has not a consistent case as to how and when he recognised them. Neither before the Sub-Inspector nor before the Committing Magistrate had he stated that the accused had turned round and that he recognised them then by seeing their faces. But, in this Court, in one place he says that they turned round when they got into the drain. He at once contradicts it by saying that they did not turn round when they were running along the drain but that they turned round when they were climbing up the hill from the drain. These inconsistent statements show that he had not recognised any one at the time, but that he is simply building upon what P. W. 2 might have told him, drawing freely on his own imaginations. Further, he admits that his house is at Puttur far away from the village and that he had known the accused only for about four or five months. I am not satisfied that he recognised any one that day and I do not think that much reliance can be placed on his evidence, though, I have no doubt whatever that he was with P. W. 2 at the time but at some distance behind him.

15. The confessional statement of the 1st accused (Exhibit F) is the most important piece of evidence against him. It is a very lengthy statement and the gist of it is this:—The deceased and P. W. 10 were on very bad terms as the former had included the latter as an accused in the complaint of P. W. 16. During the pendency of that complaint, P. W. 10 suggested to the 1st accused that he should shoot and kill the deceased. The 1st accused therefore even lay in wait for the deceased one day, but did not shoot him. Subsequently when he (1st accused) was impleaded as an accused in the complaints of P. Ws. 17 and 18, he questioned P. W. 10 why he was also included. P. W. 10 then told him that it was the work of P. W. 18 and that nothing would happen to him. On the Saturday previous to the death of the deceased when the 1st accused met P. W. 10 at Bijadakatte, P. W. 10

told him that the deceased would be returning from Sulugodu the next morning, that such a swindler should not be allowed to go back and that he (P. W. 10) would send three persons with guns to Shenithadka early next morning, that he (1st accused) also should go there with a gun. The 1st accused then went to P. W. 12 and asked him for his gun saying that he wanted it for shooting rabbits. P. W. 12 gave him a gun which was already loaded, saying that he should return it the same night. He took it saying that he could return it only the next morning. Early next morning he got up and went to Shenithadka and there he met Derappa Gowda, Beliappa and Thyampa Gowda. Derappa and Beliappa sat close to each other among the trees on the southern side of the road. He (1st accused) and Thyampa sat a little away from them. When they sighted the deceased, Derappa fired his gun from the front and Beliappa also fired his gun. There was then smoke all over, but still he (1st accused) also fired the gun. As the deceased was not then visible to him, he did not know whether his shot struck him or not. Thyampa, who was then with him, ran from the place and chased the deceased along the road. He (1st accused) ran towards his house along the forest track. Immediately afterwards, he heard another report of a gun. On his way home, he (1st accused) met the Holaya Mansa and handed over the gun to him asking him to deliver it to P. W. 12. Later that afternoon, Thyampa Gowda went to him and told him that, after the deceased had gone along the road for about half a furlong, he shot him again and that the deceased then fell down there and died and asked him not to disclose it to any one.

16. The Circle Inspector says that he had examined P. W. 13 and one Mansa, who was a prosecution witness before the Committing Magistrate, on the 7th December. He also says that when the 1st accused appeared before him on the 8th December, he denied all knowledge of the offence, but that when he was confronted with Mansa, he made a statement to him. He was therefore sent the next day *i. e.*, 10th December to the Sub-Magistrate at Puttur for having his statement recorded. The Magistrate says that the 1st accused was given nearly two days for reflection. Though he was produced before him at 3 P. M. on the 10th, the Sub-Magistrate did not record his statement till 9 A. M. on the 12th. During the interval, the Sub-Magistrate had taken all the necessary precautions for preventing Police or other influence to be brought to bear on him. Considering all the circumstances, I have not the least hesitation in holding that the statement of the 1st accused was voluntary.

17. His case now is that the statement was a tutored one and that he happened to make such a statement because he was threatened by the Police. A perusal of the statement will convince any one that it could not have been tutored by the Police. The three accused in this case were the only persons against whom there was any evidence in the hands of the Police at the time. It is quite unlikely then that the Police would have tutored the 1st accused to say that accused 2 and 3 had not taken any part in the offence but three others joined him at the instigation of P. W. 10. Again, in his statement the 1st accused says that he met P. W. 3 near his uncle Chandu Gowda's house and that P. W. 3 was then driving a cart of the deceased. This means that P. W. 3 was not following the deceased at the time the latter was shot. It is highly improbable that the Police would have suggested this to the 1st accused when the only witnesses they had against the accused were P. Ws. 2 and 3. There are also several other circumstances which clearly show the statement could not have been a tutored one. It is also quite unlikely that the Police would ever have threatened the accused to make such a statement. It is not the accused's case that any inducement was offered to him, and there is no evidence of any such

inducement either. On the whole, I have no doubt whatever that his explanation for the statement is absolutely false. The question is how far his statement is true.

18. His statement that it was the deceased who got the complaint against him and others filed by P. W. 16 is satisfactorily proved. There is also evidence that he was included as an accused in the complaints of P. Ws. 17 and 18. That he had therefore a grudge against the deceased and a motive to do harm to him is thus satisfactorily corroborated.

19. Again, his statements that he borrowed a gun from P. W. 12 on that Saturday evening and that he returned it to him on Sunday morning are satisfactorily corroborated by the evidence of P. Ws. 12 and 13. P. W. 12 belongs to a family having properties paying Rs. 20p for assessment. He says that the gun (M. O. 2) belongs to him, that the 1st accused went to him on Saturday evening and asked him for his gun saying that he wanted it for shooting rabbits, that he lent it to him and told him that he should return it the same evening and that the 1st accused took it saying that he would return it only the next morning. Exhibit H is the license for the gun. It does not authorise him to lend the gun to anybody. He is therefore certainly speaking against his own interest when he says that, in contravention of the specific conditions laid down in his license, he lent the gun to the 1st accused. It is pointed out that the 1st accused's father had a gun and his brother-in-law also had a gun, and it is argued that it is highly improbable that the 1st accused would have borrowed a gun from P. W. 12. It may be that the 1st accused, for reasons best known to him, did not want to get the gun belonging to his father or his brother-in-law. The fact that they had guns is no reason to disbelieve the evidence of P. W. 12, especially in view of the admissions of the 1st accused.

20. P. W. 13 says that on Sunday morning at about six or seven *ghaliges* after sunrise, he saw the Holaya named Mansa going along the field with a gun in his hand in the direction of the house of P. W. 12. There is no reason shown why his evidence should be discredited. He and Mansa were examined by the Circle Inspector two days before the 1st accused made his statement to him. The Circle Inspector says that it was when the 1st accused was confronted with Mansa that the 1st accused made a statement to him. Mansa was examined as a witness for the prosecution before the Committing Magistrate, but he was not available at the trial here. P. W. 12 says that one of the barrels of his gun had been loaded at the time he lent it to the 1st accused. The 1st accused's statement also is to the same effect. The evidence of P. Ws. 12 and 13 therefore satisfactorily corroborates the statement of the 1st accused.

21. P. Ws. 2 and 3 say that they first heard the report of three guns fired in quick succession one after the other, and that some time later they heard the 4th report. The statement of the 1st accused is to the effect that Derappa Gowda, Beliappa and he fired their guns one after another in quick succession, that Thyampa chased the deceased and that some time later he heard the report of another gun. His statement that the three guns were fired in quick succession and that the fourth was fired a little later is also therefore corroborated by the evidence of P. Ws. 2 and 3. The 1st accused says further that immediately after he fired he ran home along the forest track. It was along a forest track that P. W. 2 says that he saw the 1st accused going, after he heard the reports of the guns. P. W. 21 says that the 1st accused's house is to the north of the place where the deceased had fallen

and is not far from there. The evidence of P. W. 2 is that the 1st accused was then going north. That he ran towards his house after firing is also therefore corroborated.

22. The remaining portions of his statement, instead of being corroborated, are contradicted. P. W. 10 says that, though he and the deceased were not on friendly terms during the time the complaint of P. W. 16 was pending, he never instigated the 1st accused to murder the deceased. He also denies that on Saturday evening he told the 1st accused that he would send three persons with guns and that he (1st accused) should also go with a gun and meet them at Shenithadka. P. W. 6 says that P. W. 10 and the deceased were very friendly throughout except for a short interval in 1926 when the complaint of P. W. 16 was pending. The statement of the 1st accused that P. W. 10 was the instigator of the crime is therefore contradicted. The complaints of P. Ws. 17 and 18 were pending at the time the 1st accused made the statement. The 1st accused was an accused in these complaints and P. W. 10 is no other than the son-in-law of P. W. 18, and he was helping her in the matter of those complaints. It is not at all improbable therefore that the 1st accused implicated P. W. 10 also in his statement because of the strained relations between them at the time.

23. There is also no evidence in the case to corroborate his statement that the three persons who joined him were Derappa, Beliappa and Thyampa. On the other hand, the evidence is that the persons who were found with the 1st accused were accused 2 and 3. That portion of his statement also is therefore contradicted.

24. As portions of the 1st accused's statement are thus contradicted, it is argued that the whole of his confessional statement should be rejected. But no authority is cited for such a broad proposition. On the other hand, there is ample authority for the position that when a portion of a confessional statement is corroborated and appears probable and true, that portion can be separated from the remaining statement and acted upon, rejecting the rest of it which either appears to be improbable or is contradicted, even if it be that the portion accepted is one which inculpates the person confessing. For instance in the case of *Pulin Tanti* v. *Emperor*, reported in I. L. R. 40 Calcutta 873, at page 878 it was observed:—"After the entire statement of a prisoner has been given in evidence, any part of it may be contradicted by the prosecution, if they chose to do so, and then the whole testimony is left open for consideration precisely as in other cases where one part of the evidence contradicts another. Even without such contradiction, it is not supposed that all the parts of a confession are entitled to equal credit. If sufficient grounds exist, the part that charges the prisoner may be believed, while that which is in his favour may be rejected" and three English cases were cited in support of that view. It would however be different if the only evidence in the case is the confessional statement of the accused. But here the whole evidence has been let in by the prosecution and it is only a question of appreciation of evidence.

25. Thus, the 1st accused himself admits that he borrowed a gun from P. W. 12 on Saturday evening, that early on Sunday morning he along with three others went and sat in the forest adjoining the road where the deceased fell down, that when the deceased was sighted two of those persons fired at him, that he (1st accused) also discharged his gun, though on account of the smoke the deceased was not then visible to him, that he then ran home along the forest track and that he returned the gun to P. W. 12 through the Holaya Mansa. The evidence of P. Ws. 2, 3, 12 and 13, as already observed, satisfactorily corroborates the statement of the 1st accused in

material particulars. The fact that he has chosen to implicate P. W. 10 and three others, who are not accused in this case, is no reason to disbelieve his statement to the extent it inculpates himself. Three of the Assessors have believed the confessional statement of the 1st accused so far as it implicates himself and they are of opinion that the 1st accused was one of the persons who shot the deceased. I have no hesitation whatever in agreeing with them and in holding that he and others had joined together for the purpose of shooting the deceased dead, that he also, in furtherance of the common intention of himself and others, fired his gun immediately after two others had shot at the deceased.

10 **26.** The question then is what offence he has committed. The evidence leaves no room for doubting that the deceased was killed by being shot at by three, or perhaps four, persons. The statement of the 1st accused makes it clear that the common intention of himself and others who joined in shooting the deceased was to kill him and that he also, in furtherance of that common intention, fired his gun. In view of his statement that it was immediately after the deceased was sighted and two others who were with him fired at him that he fired, there can be no doubt that he too fired at the deceased, though it may be that on account of the smoke the deceased was not visible to him at the time. The deceased had as many as 14 gunshot injuries on account of which he died. In view of the evidence of P. W. 1 that injury No. 8 was by itself fatal and that the remaining injuries taken together were also sufficient to cause death, it cannot be held that it was the shot of only one person that killed the deceased. As those injuries were caused by more than one person in furtherance of the common intention of all to kill him, every one of those persons is, in view of the provisions of Section 34 I. P. C. guilty of murder. If, therefore, it was in furtherance of their common intention to kill the deceased that the 1st accused shot at him, he also would be guilty of murder, even if his shot was not the fatal one and even if his shot had not hit the deceased. That is the view taken of Section 34 by Their Lordships of the Judicial Committee in the case of *Barendra Kumar Gosh* v. *Emperor*, reported in I. L. R. 52 Calcutta 197. The fact that the 1st accused says that at the time he fired,
30 the deceased was not visible to him and that therefore he does not know whether the shot struck him or not, would not, therefore, absolve him in the least from liability for murder. The decision quoted above negatives the contention that the accused can be held to be guilty only of an attempt to commit murder. In view of the provisions of Section 34 I. P. C. and the interpretation put upon it by the Judicial Committee, I must hold that the 1st accused is guilty of murder.

27. It is true that the 2nd accused was one of the accused in the complaints of P. Ws. 17 and 18 and that the feelings between him and the deceased were not cordial. But apart from that, the only evidence against him is that of P. Ws. 2 and 3. I have already commented on their evidence and shown that no reliance can be placed on the evidence of P. W. 3. It has also to be remembered that the house of the 2nd accused is about 12 miles from the scene of offence and that in spite of the evidence of P. Ws. 2 and 3, the charge against him was dropped in the first instance by the Circle Inspector and that it was only on the complaint of P. W. 6, that he was committed after a preliminary enquiry. The 1st accused does not implicate the 2nd accused in his confessional statement. On the other hand, he mentions the names of three other persons. Considering all the circumstances, I do not think that the evidence of P. W. 2 that he recognised the 2nd accused that morning is sufficient to sustain the charge of murder against him. All the Assessors are of that opinion and I agree with them.

28. It was the 3rd accused's father and not the 3rd accused who was an accused in the complaints got filed by the deceased. The case against him also, it will be remembered, was dropped by the Police in the first instance and it was only on the complaint of P. W. 6 that he was committed. The 1st accused, does not implicate the 3rd accused in his confessional statement. But, unlike the 2nd accused, there is some more evidence against the 3rd accused besides that of P. Ws. 2 and 3.

29. P. W. 14 says that he lives in an out-house adjoining the house of the 3rd accused and that on Sunday night the 3rd accused took him to the forest close to the road where the deceased had fallen down, that the 3rd accused took two guns from a bush there and asked him to carry them home and that when he questioned the 3rd accused who it was who had shot the deceased, the 3rd accused admitted to him that it was he, the 1st accused, the 2nd accused and one Lingappa who shot the deceased dead. This witness was not examined by the Police at any time. He was not examined at the enquiry against the 1st accused. The witness is a cooly and one of his uncles is a tenant of the father of the deceased. It was absolutely unnecessary for the 3rd accused to take him to that place or to make such a confession to him. I am not inclined to attach any weight to his evidence.

30. His evidence is sought to be corroborated by that of P. W. 15. She is a relation of the 3rd accused. She says that, on Sunday night when she was in the *thodu* close to her house, she saw P. W. 14 going along the field with gun in his hand and that there was another person walking in front of him. She did not notice who the other person was. Her evidence is therefore of no use as against the 3rd accused. She also was not examined by the Police at any time. Three of the Assessors have not believed the evidence of these two witnesses and I am also not satisfied that their evidence is true.

31. Except the evidence of P. W. 2, therefore, there is no other reliable evidence against the 3rd accused. In view of the circumstances already referred to, I do not think that that evidence is sufficient to sustain the charge of murder against him.

32. Assessors 1 and 2 are of opinion that the 1st accused is guilty of murder. The 3rd Assessor says that the 1st accused is guilty only of an attempt to commit murder, while the 4th Assessor says that the 1st accused is not proved to be guilty of any offence. For the reasons given above, I agree with Assessors 1 and 2 in their opinion regarding the 1st accused. Assessors 2, 3 and 4 are of opinion that accused 2 and 3 are not guilty of any offence, while the 1st Assessor says that accused 2 and 3 also are guilty of murder. I agree with Assessors 2, 3 and 4 in this respect and not with the 1st Assessor.

33. There only remains the question of sentence to be imposed on the 1st accused. There are no extenuating circumstances whatever; and in gunshot murders of this kind the only sentence possible is that of death.

34. I therefore convict the 1st accused and, subject to the confirmation of the sentence by the High Court, I sentence him, under Section 302 I. P. C., to be hanged by the neck until he is dead. The 1st accused is informed that if he wishes to prefer an appeal, he must do so within seven days.

35. I acquit accused 2 and 3 of the offence charged and order them to be released from custody.

Mangalore,
3rd September 1928.

(Sd.) K. S. MENON,
Sessions Judge.

N. B. The 1st accused is committed to the Central Jail at Cannanore.

APPENDIX

WITNESSES FOR PROSECUTION.

1. Mr. K. Venkat Rao (Sub-Assistant Surgeon).
2. Dumappu.
3. Koraga Gowda.
4. I. Raghava Rao.
5. Gubbi *alias* Venkatramana Bhatta.
6. I. Rama Rao.
7. Mr. B. Somappa (Sub-Magistrate).
8. Beliappa Gowda.
9. Ramanna Gowda (Potail).
10. Timmayya Gowda.
11. Biranna Gowda.
12. Timmappa Rai.
13. Maila.
14. Hukra Gowda.
15. Akkutti.
16. Muthakke.
17. Kannan Nair.
18. Kunhamma.
19. Mr. B. Achutha Baliga (Vakil).
20. Parameshwara (Police Constable).
21. Mr. G. C. Saldanha (Sub-Inspector of Police).
22. Mr. K. Laxumana (Circle Inspector of Police).

FOR DEFENCE.—Nil.

EXHIBITS FILED ON BEHALF OF PROSECUTION

A.	5—12—1927.	*Post-mortem* certificate.
B.	14—11—1927.	Pronote by P. W. 10 to P. W. 8.
C.	19—12—1927.	Complaint of P. W. 6 to the District Magistrate.
D.	9—12—1927.	Letter to P. W. 7 by P. W. 22.
E.	12—12—1927.	Record of preliminary questions and answers.
F	Do.	Confessional statement of the 1st accused.
F1.	Do.	Certificate in Exhibit F.
G.	4—12—1927.	Potail's report.
H.	14— 9—1925.	Gun license granted to P. W. 12.
J.	23— 9—1926.	Complaint of P. W. 16.
J1.	25— 9—1926.	Verification in Exhibit J.
K.	———————.	Plan of the scene of offence.
L.	6—12—1927.	Search list for M. O. 3.
M.	9—12—1927.	Memo. for the seizure of M. O. 2.
N.	19— 1—1928.	Statement of the 1st accused before the Lower Court.
N1. N2.	31— 7—1928.	Statements of accused 2 and 3 before the Lower Court.

FOR DEFENCE.

I. II.	9— 1—1928.	Portions marked in the deposition of P. W. 3 in the Lower Court.
III.	10—12—1927.	Remand order.

MATERIAL OBJECTS.

1. Four lead shots.
2. A double-barrelled muzzle loading gun.
3. A single-barrelled gun.

(Sd.) K. S. MENON,
Sessions Judge.

(True copy).

Sessions Judge.

PUBLIC PROSECUTOR'S OFFICE
27 SEP 1928
MADRAS

WORDS: 8,490.

Printed at the Codialbail Press, Mangalore, S. K.

11-5 (a)—3,002—20-7-28. (6)

Law (General) DEPARTMENT.

	Date.	Initials.
When received for Fair-copying.		
When copied		
When examined		
When signed		
When despatched		

Criminal appeal —
2nd Appeal against acquittal — 2nd and 3rd accused
Sessions Case No. 3-36 of 1928
on the file of the Sessions Judge, South Kanara —
Declined.

GOVERNMENT OF MADRAS — 27 OCT 1928 — SECRETARIAT

34 / 6/10

READ AGAIN G.O. No. , dated 192 .

" " " " " 192 .

READ ALSO:—

C. No. 47698 From the Public Prosecutor, Madras, No. Opn 944/28, dated 1.10. 1928

" " " " " 192

" " " " " 192

ORDER.
Misc.

No. 1111, dated 4/10 192

The Govt do not consider it advisable to appeal to the High Court against the judgment of the Sessions Judge, South Kanara, acquitting the 2nd and 3rd accused, in S.C. No. 3-36 of 1928 on his file.

To the Public Prosecutor, Madras
District Magistrate, South Kanara.

FE 5.10.28

GS 5-10-28

MRR 5-10-28.4

5-10-28

Note. —

The Public Prosecutor

is of opinion that an appeal against acquittal under section 302, I.P.C. in respect of accused 2 and 3 in the case is not likely to be successful.

E.A.2.

10.7.74